

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MINITUBISHI MOTORS CREDIT OF §
AMERICA, INC., §

Plaintiff, §

v. §

FF&J INVESTMENT, LTD. and FF&J §
MANAGEMENT, INC. §

Defendants. §
§

CIVIL ACTION NO. H-06-3383

AGREED PRELIMINARY INJUNCTION

On the date set forth below, came before the Court the Motion for Emergency Relief (Writ of Sequestration and/or Preliminary Injunction) of Mitsubishi Motors Credit of America, Inc. ("MMCA"). The Court, having reviewed the pleadings, the affidavit of Charles J. Chirco and exhibits thereto, and other evidence submitted, and finding that the motion for the preliminary injunction is unopposed and the parties have agreed to the entry of this preliminary injunction, concludes that the motion requesting a Preliminary Injunction is meritorious and should be granted. The Court finds as follows:

1. Notice of MMCA's Motion for Emergency Relief (Writ of Sequestration and/or Preliminary Injunction) was provided to Defendants FF&J Investments, Ltd. ("FF&J") and FF&J Management, Inc. ("FF&J Management") by providing copies of MMCA's pleadings to the attorney for FF&J and FF&J Management on or before October 31, 2006, prior to the Court's consideration of MMCA's motion;

2. Defendants have been served in this case and all parties are represented by counsel.

3. The Court has jurisdiction to issue a preliminary injunction in this cause;

4. In the above-styled and numbered cause, Plaintiff MMCA sues FF&J and FF&J Management ("Defendants") for the enforcement and foreclosure of its security interest in motor vehicle collateral, identified as follows:

Vin Number	Serial Number	Stock Number	Year	Vehicle Make	Vehicle Model	Current Principal Balance
4A3AK34T86E001605	001605	M6003	2006	MIT'S	ECLIP GT EI	\$23,006.15
JA4LX31F26U005595	005595	M6015	2006	MIT'S	OUT LS2WD V1	\$19,542.77
4A3AB76S36E008103	008103	M6101	2006	MIT'S	GALANT GTS	\$25,259.00
4A3AB26F66E012703	012703	M6012	2006	MIT'S	GALANT DE G1	\$19,096.71
4A3AB356F76E018155	018155	M6022	2006	MIT'S	GALANT ES 23	\$22,221.59
4A3AB356S16E020643	020643	M6016	2006	MIT'S	GAL LSV6 G2	\$24,855.89
4A3AD56F96H021252	021252	M6103	2006	MIT'S	GALANT ES/LS	\$21,617.62
JA4LX31F96U026461	026461	M6076	2006	MIT'S	OUT LS2WD V1	\$19,542.77
4A4MM21SX6E029513	029513	M6027	2006	MIT'S	ENDVR LS2 E3	\$25,673.61
JA3AJ26E26U035557	035557	M6092	2006	MIT'S	LANCER ES	\$15,341.29
4A3AB56F16E038806	038806	M6044	2006	MIT'S	GALANT ES 23	\$22,919.59
4A3AH36FX6E039442	039442	M6045	2006	MIT'S	GALANT ES 23	\$20,096.59
4A4MM31S76E040796	040796	M6057	2006	MIT'S	ENDVR LS2 E3	\$27,417.61
4A4MM21S36E043365	043365	M6056	2006	MIT'S	ENDVR LS2 E3	\$25,673.61
4A4MM21S36E044290	044290	M6058	2006	MIT'S	ENDVR LS2 E3	\$25,673.61
4A4MM41SX6F054679	054679	M6088	2006	MIT'S	ENDVR LTD2E5	\$30,839.87
JA3AJ26E26U059406	059406	M6111	2006	MIT'S	LANCER ES	\$15,371.29
JA3AJ26E86U059667	059667	M6110	2006	MIT'S	LANCER ES	\$15,371.29
JA3AJ26E86U062178	062178	M6114	2006	MIT'S	LANCER ES	\$16,075.29
JA3AJ26E66U062390	062390	M6120	2006	MIT'S	LANCER ES	\$16,799.83
JA3AJ26EX6U062487	062487	M6116	2006	MIT'S	LANCER ES	\$16,799.83
JA3AJ26E16U062787	062782	M6115	2006	MIT'S	LANCER ES	\$16,075.29
1Z7HT38N86S560525	560525	M6107	2006	MIT'S	RAIDER DUROC	\$29,818.19
1Z7HC22K36S563212	563212	M6048	2006	MIT'S	RAIDER LSE	\$21,083.17
1Z7HC32K86S576396	576396	M6087	2006	MIT'S	RAIDER DCE	\$22,665.80
1Z7HC38N86S578828	578828	M6073	2006	MIT'S	RAIDER DCD	\$26,658.42
1Z7HC28K96S582127	582127	M6105	2006	MIT'S	RAIDER LS	\$22,890.98
1Z7HT28K96S586940	586940	M6117	2006	MIT'S	RAIDER LS	\$25,737.32
4A3AK24F07E007226	007226	M7007	2007	MIT'S	ECLIPSE GS	\$19,806.73
4A3AK34T17E008686	008686	M7006	2007	MIT'S	ECLIPSE GT	\$26,820.69
4A3AK24F07E010093	010093	M7002	2007	MIT'S	ECLIPSE GS	\$21,741.71
4A3AK24F47E010372	010372	M7003	2007	MIT'S	ECLIPSE GS	\$21,741.71
4A3AL35T37E012329	012329	COPPER	2007	MIT'S	ECLIPSE SPYD	\$28,347.19
4A3AK34T37E014263	014263	M7103	2007	MIT'S	ECLIPSE GT	\$26,530.69
4A3AK34TX7E014549	014549	M7012	2007	MIT'S	ECLIPSE GT	\$25,354.69
4A3AK24F57E015662	015662	M7014	2007	MIT'S	ECLIPSE GS	\$23,145.71
4A3AK34T57E015821	015821	M7015	2007	MIT'S	ECLIPSE GT	\$25,240.69
4A3AB26F07E020166	020166	M7020	2007	MIT'S	GALANT DE	\$19,603.57

4A3AK34T27E020572	020572	M7019	2007	MIT	ECLIPSE GT	\$25,240.69
4A3AB26F97E021333	021333	M7018	2007	MIT	GALANT DE	\$19,603.57
4A3AK24F77E023066	023066	M7023	2007	MIT	ECLIPSE GS	\$21,741.71
4A3AK24F77E023617	023617	M7022	2007	MIT	ECLIPSE GS	\$21,855.71
4A3AL25F67E024365	024365	M7024	2007	MIT	ECLIPSE SPYD	\$26,521.55
4A3AL25FX7E024904	024904	M7025	2007	MIT	ECLIPSE SPYD	\$27,811.55
					43 Unpaid Units	\$995,233.04

The above listed vehicles are hereinafter referred to as "the Vehicles".

4. The security interest against the Vehicles secures the payment of sums due under a Motor Vehicle Inventory Loan and Security Agreement and addendum ("Security Agreement") thereto, in an amount not less than \$1,300,000;

5. FF&J's Security Agreement with MMCA prohibits FF&J from selling vehicle collateral without paying for it as agreed;

6. FF&J and FF&J Management has, in violation of its Security Agreement, disposed of over \$375,000.00 of MMCA's collateral without paying for it as required by the Security Agreement and without providing substitute collateral. Some of the sales were to retail purchasers for value, who may take the vehicles free and clear of MMCA's security interest. In other cases, FF&J's sale of the vehicles may create disputes between the buyer and the buyer's finance company on the one hand and MMCA on the other, as to whether the buyer is a bona fide purchaser and whether MMCA's security interest remains in effect.

7. FF&J engaged in similar breaches of the Security Agreement in early 2006. MMCA filed suit in this Court¹, and Defendants subsequently agreed to the entry of a temporary restraining order. Before the agreed order was filed with this Court, FF&J cured its breaches of the Security Agreement, and MMCA moved to dismiss the earlier suit without prejudice in May 2006. By July 2006, FF&J had again sold collateral without paying for it as it had agreed to do

¹ Cause No. H-06-1368, *Mitsubishi Motors Credit of America, Inc. v. FF&J Investment, Ltd. and FF&J Management, Inc.*, In the United States District Court for the Southern District of Texas, Houston Division.

in the Security Agreement and was again in default. FF&J has not corrected that default, and has committed further sales of collateral without paying for it, resulting in a loss of over \$375,000 of MMCA's collateral.

8. If the loss of collateral is not enjoined, FF&J does not have sufficient other collateral or other assets with which to satisfy a judgment for amounts owed to MMCA.

9. Immediate and irreparable injury, loss and damage will result to MMCA from loss of its collateral unless Defendants FF&J and its general partner, FF&J Management, are enjoined and ordered as provided in this Preliminary Injunction and, under the circumstances, MMCA will suffer irreparable financial injury for which there is no adequate remedy at law;

11. There is a substantial likelihood Plaintiff MMCA will succeed on the merits;

12. The threatened injury to MMCA outweighs any damage the injunction might cause to FF&J; and

14. The injunction will not disserve the public interest.

15. This Preliminary Injunction poses no risk of monetary loss to the parties enjoined by this order. FF&J and FF&J Management have agreed to the entry of the Preliminary Injunction and have acknowledged that it essentially orders them to do what FF&J had already agreed to do in its contract with MMCA, and have further stipulated and requested that the cash bond posted by MMCA on October 27, 2006, in the amount of \$5000.00, as security for issuance of the temporary restraining order entered October 26, 2006, be reduced to \$1000.00 and the balance refunded to MMCA; and

16. Given certain assurances and representations of Defendants, MMCA has agreed to postpone, for 30 days, the hearing on that portion of MMCA's Motion for Emergency Relief that seeks issuance of a writ of sequestration for all vehicle collateral currently in Defendants'

possession, without prejudice to its going forward on the motion for sequestration at the conclusion of the 30 day period, or earlier, if further default or risk to its collateral should occur, and without prejudice to any other relief that MMCA may request.

It is therefore:

ORDERED, ADJUDGED and DECREED that FF&J and FF&J Management and their officers, agents, servants, employees, and attorneys, and all those in active concert or participation with them, are hereby ordered to refrain immediately from selling, transferring, disposing of, leasing or destroying any of the Vehicles, or allowing any third person to take or have possession of any such Vehicle, or entering any contract to do any of the foregoing, unless either:

- (i) FF&J pays to MMCA the amounts owed on the Vehicle (as shown in the "Current Principal Balance" column above) on the first to occur of: (a) the first business day after FF&J receives payment from the purchaser of the Vehicle, the purchaser's finance company, or any other source, or (b) the seventh business day after the Vehicle is sold or delivered to a customer; or,
- (ii) MMCA expressly consents in writing to the sale, lease, transfer or other disposition or possession of the Vehicle.

The prohibition on allowing a third person to have possession of a Vehicle does not prevent FF&J or FF&J Management from allowing bona fide prospective buyers to operate a Vehicle for bona fide demonstration purposes not to exceed two hours per demonstration.

It is further ORDERED, ADJUDGED AND DECREED that FF&J and FF&J Management keep each Vehicle described in this Order at FF&J's dealership at 1309 South

Texas Avenue, Bryan, Texas, until the Vehicle is sold or leased or until FF&J has paid the amount owed on the Vehicle (as shown in the "Current Balance," above), unless the Vehicle is being used for bona fide demonstration purposes in accordance with the preceding paragraph of this Order, and if any of the Vehicles are not currently at that address they shall be returned to that address the day this Order is entered.

It is further ORDERED, ADJUDGED AND DECREED that FF&J and FF&J Management keep each Vehicle described in this Order fully insured against loss due to fire, hail, windstorm, theft and other perils covered by a commercial inventory insurance policy or, if it elects to obtain the coverage through MMCA, that it pay MMCA monthly the cost billed to it by MMCA for the coverage by not later than the fifth day of the month following the month of coverage.

It is further ORDERED, ADJUDGED AND DECREED that FF&J and FF&J Management shall allow MMCA to perform audits and inspections of the Vehicles, and, in connection with the audits and inspections, allow MMCA access to all records pertaining to the Vehicles or to the sale, lease or other disposition of the Vehicles.

It is further ORDERED, ADJUDGED and DECREED that the cash bond posted by MMCA on October 27, 2006, in the amount of \$5,000.00 as security for issuance of the temporary restraining order entered October 26, 2006, be reduced to \$1000.00, and that the Clerk of the Court remit \$4000.00 of the cash bond amount to MMCA.

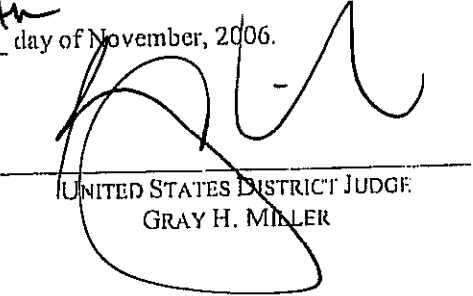
It is further ORDERED, ADJUDGED and DECREED that this injunction take effect immediately.

It is further ORDERED, ADJUDGED and DECREED that the hearing on MMCA's Motion for Emergency Relief (Preliminary Injunction and/or Writ of Sequestration), currently set

for November 15, 2006 at 10:00 a.m., is postponed. The need for a hearing on that portion of MMCA's motion that seeks a preliminary injunction is eliminated by this agreed injunction. A hearing on that portion of MMCA's motion that seeks a writ of sequestration will be held on or about December 14, 2006 or as soon thereafter as may be scheduled, at a date and time to be determined after conference with the Court's case manager. This Order does not prevent MMCA from seeking an earlier hearing on its motion for sequestration should further defaults or risks to its collateral arise; nor does it prevent MMCA from seeking other or additional relief.

This preliminary injunction shall remain in effect pending trial on the merits of the above-entitled action, or until further order of this Court.

SIGNED at Houston, Texas on this the 15th day of November, 2006.



UNITED STATES DISTRICT JUDGE
GRAY H. MILLER

APPROVED AS TO FORM AND SUBSTANCE AND
ENTRY REQUESTED:

LAW OFFICE OF J. FRED BAYLISS

By: 

J. Fred Bayliss
ATTORNEY-IN-CHARGE
So. Dist. Bar No. _____
State Bar No. 01941080

1305 West Villa Maria
Bryan, Texas 77801
Telephone: (979) 779-9375
Facsimile: (979) 779-0567

ATTORNEY FOR DEFENDANTS
FF&J INVESTMENT, LTD. AND FF&J MANAGEMENT, INC.

MCGINNIS, LOCHRIDGE & KILGORE, L.L.P.

By: 

Karan C. Ciotti
So. Dist. Bar No. 16874
State Bar No. 05226300
ATTORNEY-IN-CHARGE

3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010
Telephone: (713) 615-8500
Facsimile: (713) 615-8585

OF COUNSEL:

William H. Daniel
So. Dist. Bar No. 15992
State Bar No. 05362700
MCGINNIS, LOCHRIDGE & KILGORE L.L.P.
600 Congress Avenue
Suite 2100
Austin, Texas 78701
Telephone: (512) 495-6000
Facsimile: (512) 495-6093

ATTORNEYS FOR PLAINTIFF
MITSUBISHI MOTOR CREDIT OF AMERICA, INC.